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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/647,575	10/02/2000	Paul John Rennie	CM1737	8556

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EXAMINER

MITCHELL, TEENA KAY

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 03/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/647,575	RENNIE, PAUL JOHN
	Examiner Teena K Mitchell	Art Unit 3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 October 2000.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3 and 11-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 October 2000 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the spray generator, electrostatic spray with a voltage source, cone angle of varying sizes as in claims 11 and 12, a depiction of the spray device without substantially penetrating the nostrils, and the device spraying into two nostrils must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

- Page 9, line 28, "...tow..." should be amended to read --two--.
- Page 12, it is suggested that a title for the section relating to the drawings be added (i.e. Brief Description of the Drawings).

Correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3, 13, 14, 18, and 19 recites the limitation "...the range..." in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "...the fluid..." in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "...the nasal cavity..." in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "...the nostrils..." in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 20, "...according to claim 2..." is indefinite; claim 20 cannot depend from claim 2 because the claim depends from independent claim 16.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeffries et.al (5,490,633) in view of Coffee (6,105,571).

Coffee in a dispensing device discloses:

- a packaged spray device, suitable for spraying into bodily cavity (col. 2, lines 18-23, Col. 3, lines 65-67, and col. 4, lines 1-21), the device comprising
- a spray generator (Col. 2, lines 24-30), a fluid reservoir (13);
- the fluid reservoir contains a pharmaceutically acceptable fluid, the fluid comprising a pharmaceutically acceptable treatment agent (Col. 3, lines 34-60, Col. 4, lines 11-21, and Col. 5, lines 19-24).

While Coffee is not explicit on a nosepiece the device is fully capable of having a nosepiece, inasmuch as it is well known to supply inhalation medication via the nasal passages, resort is had to Jeffries in a dispensing device which teaches a nose piece (10).

It would have been obvious to modify the device of Coffee to employ any well-known delivery means because it would have provided a means to delivery medication via inhalation including the nosepiece taught by Jeffries.

Jeffries teaches the device is adapted to produce a spray having a fluid ligament extending from the nosepiece (10), the ligament having a nosepiece end and a delivery end, the spray further comprising a spray cone diverging from the delivery end of the ligament (Col. 1, lines 65-67; Col. 3, lines 38-

Coffee/Jeffries discloses the claimed invention except for the ligament having a length of from 1 to 20 mm from the nosepiece end to the delivery end. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the ligament length from 1 to 20 mm from the nosepiece end, since it has been held that where the general conditions of a claim are disclosed in the prior art,

discovering the optimal or workable ranges involves only routine skill in the art, absent persuasive evidence that a particular length of the ligament is significant. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

With respect to claim 2, Coffee discloses an electrostatic spray device (Figs. 1-5).

With respect to claim 3, Coffee discloses wherein a voltage in the range from 1 kV up to 10 kV is applied to the fluid (Col. 2, lines 24-30).

Claims 11-14 are equivalent in scope to claim 1 discussed above and are included in Coffee/Jeffries.

With respect to claim 15, Coffee discloses wherein the device is adapted to provided multiple unit fluid doses (Col. 1, lines 60-63).

With respect to claim 16, the device of Coffee is fully capable of spraying fluid into the nasal cavity without substantially penetrating the device into nostrils inasmuch as it is a spray having a ligament.

Claims 17-19 are equivalent in scope to claims 1 and 16 discussed above and are included in Coffee/Jeffries.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show spray devices, electrostatic devices, and inhalers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena K Mitchell whose telephone number is (703) 308-

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4016. The examiner can normally be reached on Monday-Thursday 5:30 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

TKM

TKM

March 11, 2002


John G. Weiss
Supervisory Patent Examiner
Group 3700